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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85320; File No. SR-CboeBZX-2019-014]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Fee Schedule Applicable to Members and Non-Members of the Exchange Pursuant to BZX Rules 15.1(a) and (c) March 14, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 1, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members³ of the Exchange pursuant to BZX Rules 15.1(a) and (c). The text of the proposed rule change is attached as Exhibit 5 [sic].

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fee schedule applicable to its equities trading platform ("BZX Equities") to 1) add a fourth Step-Up Tier under footnote 2, and 2) amend the second Single MPID Investor Tier under footnote 4.

Step-Up Tier 4

The Exchange currently offers three Step-Up Tiers that provide Members with additional ways to qualify for an enhanced rebate where they increase their relative liquidity each month over a predetermined baseline. Under the current Step-Up Tiers, a Member receives a rebate of \$0.0030 (Tier 1) or \$0.0031 (Tier 2 and Tier 3) per share for qualifying orders which yield fee codes B,⁴ V,⁵ or Y⁶ if the corresponding required criteria per tier is met.

The Exchange now proposes to amend footnote 2 to add a fourth Step-Up Tier. Under the proposed Step-Up Tier 4, a Member would receive a rebate of \$0.0032 per share for their

⁴ Fee code B is appended to displayed orders which add liquidity to Tape B and is provided a rebate of \$0.0025 per share.

⁵ Fee code V is appended to displayed orders which add liquidity to Tape A and is provided a rebate of \$0.0020 per share.

⁶ Fee code Y is appended to displayed orders which add liquidity to Tape C and is provided a rebate of \$0.0020 per share.

qualifying orders which yield fee codes B, V, or Y where the Member has a Step-Up Add TCV from December 2018 greater or equal to 0.50%. As currently defined in the BZX Equities fee schedule, Step-Up Add TCV means AD⁷ as a percentage of TCV⁸ in the relevant baseline month subtracted from current AD⁷ as a percentage of TCV.⁹ Members that achieve the proposed Step-Up Tier 4 must therefore increase the amount of liquidity that they provide on BZX by .50% relative to their AD⁷ as a percentage of TCV in December 2018, thereby contributing to a deeper and more liquid market.

Single MPID Investor Tier 2

The Exchange currently offers two Single MPID Investor Tier under Footnote 4 of the fee schedule that provides Members with an additional way to qualify for an enhanced rebate for orders yielding fee codes B,¹⁰ V,¹¹ or Y¹². The distinction between the Single MPID Investor Tiers and other tiers offered by the Exchange, is that the volume measured to determine whether a Member qualifies is performed on a Member Participant Identifier (“MPID”) basis. Currently, a Member receives a \$0.0031 (Tier 1) or \$0.0036 (Tier 2) per share rebate for qualifying orders

⁷ “AD⁷” means average daily volume calculated as the number of shares added per day. AD⁷ is calculated on a monthly basis.

⁸ “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

⁹ The following demonstrates how Step-Up Add TCV is calculated: In December 2018, Member A had an AD⁷ of 12,947,242 shares and average daily TCV was 9,248,029,751, resulting in an AD⁷ as a percentage of TCV of 0.14%; In February 2019, Member A had an AD⁷ of 46,826,572 and average daily TCV was 7,093,306,325, resulting in an AD⁷ as a percentage of TCV of 0.66%. Member A’s Step-Up Add TCV from December 2018 was therefore 0.52% which makes Member A eligible for the Tier 3 rebate. (i.e., 0.66% (Feb 2019) – 0.14% (Dec 2018), which is greater than 0.50% as required by Tier 3).

¹⁰ See supra note 5.

¹¹ See supra note 6.

¹² See supra note 7.

per MPID which yield the applicable fee codes if the corresponding required criteria per tier is met. Specifically, the current Tier 2 provides Members an opportunity to receive an enhanced rebate of \$0.0036 per share where the Member's MPID has an ADAV¹³ as a percentage of TCV¹⁴ greater than or equal to 2.25% on orders yielding the applicable fee codes.

The Exchange now proposes to amend Tier 2 of the Single MPID Investor Tiers so that a Member would receive a rebate of \$0.0032 per share for qualifying orders on an MPID basis which yield fee codes B, V, or Y where the MPID has an ADAV as a percentage of TCV greater or equal to .75% on orders yielding the applicable fee codes, and where the MPID has an ADAV as a percentage of ADV¹⁵ greater than or equal to 80% on orders yielding the applicable fee codes. The proposed change intends to ease Tier 2's current criteria and encourage entry of additional orders to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(4),¹⁷ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or

¹³ See supra note 8.

¹⁴ See supra note 9.

¹⁵ "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4).

incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange.

The Exchange notes that rebates such as those proposed herein have been widely adopted by exchanges¹⁸, including the Exchange¹⁹, and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. The Exchange believes that the proposed fourth Step-Up Tier and the proposed amendments to the second Single MPID Investor Tier are a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because the proposed changes will continue to provide Members with an incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the proposed Step-Up Tier 4 is a reasonable means to encourage Members to increase their liquidity on the Exchange based on increasing their relative volume above a predetermined baseline. The proposed fourth tier creates an additional opportunity for Members to receive an enhanced rebate for contributing increased liquidity as compared to the end of the previous year (2018). Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that proposed rebate is reasonable based on the difficulty of satisfying the tier's criteria, using December 2018 as the predetermined baseline. Furthermore, the Exchange believes that the proposed Step-Up Tier 4 is not unfairly

¹⁸ See e.g., NYSE Arca Equities, Fees and Charges, Step Up Tiers; NASDAQ Rule 7018(a) & Rule 7014(j).

¹⁹ See Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 2, Step-Up Tiers 1-3 & Footnote 4, Single MPID Investor Tiers 1-2.

discriminatory as it applies to all Members that meet the required criteria.

Similarly, the Exchange believes the proposed modification decreasing the ADAV as a percentage of TCV criteria while implementing a percentage of ADV criteria that a Member must meet per MPID to receive the rebate under the second Single MPID Investor Tier is a reasonable means to further incentive Members to send a higher level of orders to the Exchange. The Exchange believes that decreasing the tier's criteria, although modestly, will encourage those Members who could not achieve the tier previously to increase their order flow as a means to receive the tier's enhanced rebate on an MPID basis. The Exchange also believes that the proposed lesser rebate than offered before is reasonable as it is commensurate with the proposed decreased criteria. In addition to this, the Exchange believes that the proposed supplementary ADAV as a percentage of ADV criteria to achieve Tier 2 is reasonable because it is related to the current criteria in Tier 1 and proposed criteria (as described above) in Tier 2, and reasonably reflects the scaled difficulty from achieving Tier 1 to achieving Tier 2. As a result, the Exchange believes that the proposed Tier 2 modifications and the additional criteria are reasonable and equitable because they will provide Members who viewed the current criteria as too high and did not previously attempt to achieve the tier's criteria with an incentive (albeit a lesser rebate than before) to add order flow to reach the new lower threshold, while ensuring that the Tier 2 threshold appropriately reflects a scaled difficulty from that of achieving Tier 1. Furthermore, the Exchange believes that the proposed criteria to Tier 2 is non-discriminatory because it applies and is available to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances

competition as it is intended to increase the competitiveness of BZX by adopting an additional pricing incentives and modifying existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive.

Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange also notes that the proposed change is intended to enhance the rebate for liquidity added to the Exchange, which is intended to draw additional liquidity to the Exchange to the benefit of all market participants. The Exchange does not believe the proposed amendment would burden intramarket competition as it would be available to all Members uniformly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and paragraph (f) of Rule 19b-4²¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-014 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2019-014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-014 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman,
Deputy Secretary.

²² 17 CFR 200.30-3(a)(12).

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